

United States 7  
**Circuit Court of Appeals**  
For the Ninth Circuit.

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PASCO BAKOTICH,

Plaintiff in Error,

VS.

UNITED STATES OF AMERICA,

Defendant in Error.

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**Transcript of Record.**

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Upon Writ of Error to the United States District Court  
of the District of Oregon.

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FILED

OCT 10 1924

F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

Mr. CHARLES W. ROBISON, Astoria, Oregon,  
and Mr. E. M. MORTON, Yeon Building,  
Portland, Oregon,

For the Plaintiff in Error.

Mr. JOHN S. COKE, United States Attorney for  
the District of Oregon, and Mr. MILLAR E.  
McGILCHRIST, Assistant United States At-  
torney for the District of Oregon, Old Post-  
office Building, Portland, Oregon,

For the Defendant in Error.

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## CITATION ON WRIT OF ERROR.

United States of America,  
District of Oregon,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Oregon, wherein Pasco Bakotich is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this 24th day of March, in the year of our Lord one thousand nine hundred and twenty-four.

CHAS. E. WOLVERTON,

Judge.

State of Oregon,

County of Multnomah,—ss.

Due and timely service of the within citation on writ of error is hereby accepted this 24th day of March, 1924.

MILLAR E. MCGILCHRIST,  
Assistant United States Attorney,  
Attorney for Defendant in Error.

[Endorsed]: No. C.—10471. 33—154. United States District Court, District of Oregon. Pasco Bakotich vs. The United States of America. Citation on Writ of Error. U. S. District Court, District of Oregon. Filed Mar. 24, 1924. G. H. Marsh, Clerk. [1\*]

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

PASCO BAKOTICH,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

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\*Page-number appearing at foot of page of original certified Transcript of Record.



WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America, to  
the Judge of the District Court of the United  
States for the District of Oregon, GREET-  
ING:

Because in the records and proceedings, as also  
in the rendition of the judgment of a plea which  
is in the District Court before the Honorable  
Charles E. Wolverton, one of you, between United  
States of America, plaintiff and defendant in error,  
and Pasco Bakotich, defendant and plaintiff in  
error, a manifest error hath happened to the great  
damage of the said plaintiff in error, as by com-  
plaint doth appear; and we, being willing that  
error, if any hath been, should be duly corrected,  
and full and speedy justice done to the parties  
aforesaid, and, in this behalf, do command you, if  
judgment be therein given, that then, under your  
seal, distinctly and openly, you send the record  
and proceedings aforesaid, with all things concern-  
ing the same, to the United States Circuit Court  
of Appeals for the Ninth Circuit, together with  
this writ, so that you have the same at San Fran-  
cisco, California, within thirty days from the date  
hereof, in the said Circuit Court of Appeals to be  
then and there held; that the record and proceed-  
ings aforesaid, being then and there inspected, the  
said Circuit Court of Appeals may cause further  
to be done therein to correct that error, what of

right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 24th day of March, 1924.

[Seal]

G. H. MARSH,  
Clerk of the District Court of the United States  
for the District of Oregon.

By F. L. Buck,  
Chief Deputy.

[Endorsed]: In the U. S. Circuit Court of Appeals for the Ninth Circuit. Pasco Bakotich, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed March 24th, 1924. G. H. Marsh, Clerk United States District Court, District of Oregon. By \_\_\_\_\_, Chief Deputy Clerk. [2]

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In the District Court of the United States for the  
District of Oregon.

November Term, 1923.

BE IT REMEMBERED, That on the 21st day of November, 1923, there was duly filed in the District Court of the United States for the District of Oregon, an information, in words and figures as follows, to wit: [3]

In the District Court of the United States for the  
District of Oregon.

THE UNITED STATES

vs.

PASCO BAKOTICH.

INFORMATION.

Violating Sections 3 and 21, Title II, National Pro-  
hibition Act.

United States of America,  
District of Oregon,—ss.

BE IT REMEMBERED, That J. O. Stearns, Jr., Assistant Attorney of the United States for the District of Oregon, who prosecutes in behalf and with the authority of the United States, comes here in person into court at this — term thereof, and for the United States gives the Court to understand and be informed that one Pasco Bakotich, the defendant above named, on or about the 14th day of September, 1923, at Astoria, Clatsop County, in the State and District of Oregon, and within the jurisdiction of this court, did unlawfully, wilfully and knowingly have in his possession a quantity of intoxicating liquor, to wit: moonshine whisky, fit for beverage purposes and containing more than one-half of one per cent of alcohol by volume, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.



## COUNT TWO.

That Pasco Bakotich, the defendant above named, on or about the 14th day of September, 1923, at Astoria, Clatsop County, in the State and District of Oregon, and within the jurisdiction of this court, did unlawfully, wilfully and knowingly sell a quantity of intoxicating liquor, to wit, moonshine whisky, fit for beverage purposes and containing more than one-half of one per cent of alcohol by volume, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

## COUNT THREE.

That Pasco Bakotich, the defendant above named on or about the 14th day of September, 1923, at Astoria, Clatsop County, in the State and District of Oregon, and within the jurisdiction of this court, did wilfully, unlawfully and knowingly maintain a common nuisance within the meaning of the National Prohibition Act, to wit, that building and place of business known as #83 7th Street, Astoria, Oregon, wherein intoxicating liquor, fit for beverage purposes, was then and there manufactured, kept and sold in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

WHEREUPON, the said United States Attorney for the District aforesaid prays the consideration of this Court here in the premises, and that due

process of law may be awarded against the said Pasco Bakotich, defendant, in this behalf to make his answer to the United States touching and concerning the premises.

Dated at Portland, Oregon, this — day of November, A. D. 1923.

J. O. STEARNS, Jr.,  
Asst. United States Attorney for the District of Oregon.

United States of America,  
District of Oregon,—ss.

I, J. O. Stearns, Jr., United States Attorney for the District of Oregon, being sworn, do say, that the foregoing information is true as I verily believe.

J. O. STEARNS, Jr.

Subscribed and sworn to before me this 21st day of November, A. D. 1923.

G. H. MARSH,  
Clerk of the District Court of the United States,  
for the District of Oregon.

By E. M. Morton,  
Deputy.

[Endorsed]: B. W. \$1000 Bail. No. C.—10471.  
U. S. District Court, District of Oregon. The  
United States vs. Pasco Bakotich. Information  
for Violating Sections 3 and 21, Title II, National  
Prohibition Act. Filed November 21, 1923. G. H.  
Marsh, Clerk. [4]

AND AFTERWARDS, to wit, on Saturday, the 12th day of January, 1924, the same being the 56th judicial day of the regular November term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [4½]

In the District Court of the United States for the District of Oregon.

No. C.—10,471.

January 11, 1924.

Indictment—Sections 3 and 21, Title II, National Prohibition Act.

THE UNITED STATES OF AMERICA

vs.

PASCO BAKOTICH.

MINUTES OF COURT—JANUARY 12, 1924—  
ARRAIGNMENT AND PLEA.

Now, at this day, comes the plaintiff by Mr. Joseph O. Stearns, Jr., Assistant United States Attorney, and the defendant above named in his own proper person and by Mr. C. W. Robison, of counsel. Whereupon said defendant being duly arraigned upon the indictment herein for plea thereto says he is not guilty. Whereupon, on motion of plaintiff,



IT IS ORDERED that this cause be, and the same is hereby set for trial for Thursday, February 21, 1924. [43/4]

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AND AFTERWARDS, to wit, on the 20th day of February, 1924, there was duly filed in said court a verdict, in words and figures as follows, to wit: [5]

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA

vs.

PASCO BAKOTICH,

Defendant.

VERDICT.

We, the jury duly impaneled to try the above-entitled cause, do find the defendant Pasco Bakotich guilty as charged in Count One of the information; guilty as charged in Count Two of the information; and guilty as charged in Count Three of the information herein.

Dated at Portland, Oregon, this 20th day of February, 1924.

J. W. PERIGO,  
Foreman.

Filed February 20, 1924. G. H. Marsh, Clerk.

[6]

AND AFTERWARDS, to wit, on the 26th day of February, 1924, there was duly filed in said court a motion for a new trial, in words and figures as follows, to wit: [7]

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA  
vs.

PASCO BAKOTICH,

Defendant.

### MOTION FOR A NEW TRIAL.

Comes now the defendant herein and moves the Court to grant him a new trial for the following reasons, to wit:

#### I.

That the verdict of the jury is contrary to the law and the evidence.

#### II.

Because the Court erred in refusing to give the written instructions as requested by the defendant in relation to the matter of entrapment.

#### III.

Because the Court erred in giving the instructions in the words of the Court in relation to decoy letters and in relation to entrapment.

#### IV.

Because the Court erred in instructing the jury

in relation to the matter of the defendant proving his innocence in the above-entitled cause.

C. W. ROBISON,  
Attorney for the Defendant.

State of Oregon,  
County of Clatsop,—ss.

Due service of the within motion for new trial is hereby accepted in Multnomah County, Oregon, this —— day of February, 1924, by receiving a copy thereof, duly certified to as such by C. W. Robison, one of the attorneys for defendant.

MILLAR E. MCGILCHRIST,  
Asst. U. S. Atty.,  
Attorney for Plaintiff.

Filed February 26, 1924. G. H. Marsh, Clerk.  
[8]

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AND AFTERWARDS, to wit, on Monday, the 10th day of March, 1924, the same being the 7th judicial day of the regular March term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [9]

In the District Court of the United States for the  
District of Oregon.

No. C.—10,471.

March 10, 1924.

Indictment —Sections 3 and 21, Title II, National  
Prohibition Act.

THE UNITED STATES OF AMERICA

vs.

PASCO BAKOTICH.

MINUTES OF COURT—MARCH 10, 1924—  
ORDER DENYING MOTION FOR NEW  
TRIAL.

Now at this day this cause comes on to be heard by the Court upon the motion of defendant for a new trial herein, and was argued in open court by Mr. Millar E. McGilchrist, Assistant United States Attorney. And the Court, having heard the argument of plaintiff, and having considered the written argument of Mr. Charles W. Robison, of counsel for defendant,—

IT IS ORDERED that said motion be and the same is hereby denied. [10]



AND AFTERWARDS, to wit, on Saturday, the 15th day of March, 1924, the same being the 12th judicial day of the regular March term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [11]

In the District Court of the United States for the District of Oregon.

No. C.—10,471.

March 15, 1924.

Indictment—Sections 3 and 21, Title 2, National Prohibition Act.

THE UNITED STATES OF AMERICA

vs.

PASCO BAKOTICH.

MINUTES OF COURT—MARCH 15, 1924—  
SENTENCE.

Now at this day come the plaintiff by Mr. Millar E. McGilchrist, Assistant United States Attorney, and the defendant above named in his own proper person and by Mr. Charles W. Robison, of counsel. Whereupon this being the time set for the sentence of said defendant upon the verdict heretofore returned by the jury herein,

IT IS ADJUDGED that said defendant do pay a fine of \$250.00 and that he be imprisoned in the

County Jail of Multnomah County, Oregon, for the term of nine months, and that he stand committed until this sentence be performed or until he be discharged according to law. Whereupon on motion of said defendant,

IT IS ORDERED that he be and he is hereby allowed a ten days' stay of commitment herein to perfect his appeal. Whereupon on motion of plaintiff

IT IS FURTHER ORDERED that the amount of the supersedeas bond of said defendant be and is hereby fixed in the sum of \$2,500.00 [12]

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AND AFTERWARDS, to wit, on the 24th day of March, 1924, there was duly filed in said court a petition for writ of error, in words and figures as follows, to wit: [13]

In the United States Circuit Court of Appeals for the Ninth Circuit.

PASCO BAKOTICH,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

### PETITION FOR WRIT OF ERROR.

To the Honorable Judges of the Above-entitled Court:

Your petitioner, Pasco Bakotich, defendant in the above-entitled cause, now comes and brings



this, his petition, as plaintiff in error, for a writ of error to the District Court of the United States for the District of Oregon and shows;

That on the 15th day of March, 1924, there was rendered and entered in the above-entitled cause a judgment in and by the said District Court of the United States for the District of Oregon, wherein and whereby your petitioner was sentenced and adjudged to be imprisoned in the County Jail of Multnomah County, Oregon, for a term of nine months and to pay a fine of two hundred fifty dollars (\$250.00) and to stand committed until said sentence be performed or until he be discharged according to law.

And your petitioner further shows that he is advised by counsel that there are manifest errors in the records and proceedings at and in said cause, in the rendition of said judgment and sentence greatly to the damage of your petitioner, all of which errors will be made to appear by an examination of the record in said cause and by the bill of exceptions tendered and filed herein by your petitioner and in the assignments of error filed herewith.

To the end, therefore, that the said judgment and sentence and proceedings in said cause may be reversed by the [14] United States Circuit Court of Appeals of the Ninth Circuit, your petitioner prays that a writ of error may be issued directed therefrom to the District Court of the United States for the District of Oregon, returnable according to law and the practice and rules of this court, and that there may be directed to be

returned, pursuant thereto, a true copy of the record, bill of exceptions, assignments of error, and all relevant proceedings had in said cause, that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit to the end that the errors, if any there be, may be fully corrected and full and speedy justice done your petitioner. And your petitioner now makes and files herewith his assignments of error upon which he will rely and which will be made to appear by the return of said record in obedience to said writ.

WHEREFORE your petitioner prays the issuance of a writ of error as hereinbefore set forth and prays that his assignments of error, filed herewith, be considered as his assignments of error upon said writ and that the judgment entered in this cause be reversed and held for naught and said cause remanded for further proceedings and that an order be made fixing the amount of security which said petitioner shall furnish upon said writ of error and that upon the giving of such security all proceedings in the District Court of the United States for the District of Oregon be suspended and stayed until the determination of said writ of error.

C. W. ROBISON,

E. M. MORTON,

Attorneys for Plaintiff in Error.

Service accepted this 24th day of March, 1924.

MILLAR E. McGILCHRIST,

Assistant United States Attorney,

Attorney for Plaintiff.

Filed March 24, 1924. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on the 24th day of March, 1924, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit: [16]

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

PASCO BAKOTICH,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

#### ASSIGNMENTS OF ERROR.

Comes now the plaintiff in error above named and presents this his assignments of error upon which he will rely in the United States Circuit Court of Appeals for the Ninth Circuit and specifies the following particulars wherein it is claimed that the District Court erred in the course of the trial of said cause:

##### I.

That the trial Court erred in refusing to give the jury the following instruction requested by the defendant:

“The Court instructs the jury that in cases where criminal intent originates in the mind of the defendant, the fact that officers, either of the Government or of the state used decoys or untruthful statements to furnish opportunity for or to aid the accused in the commis-



sion of a crime in order successfully to prosecute him therefor, that these acts of the officers are no defense, but, on the other hand, if the accused never conceived any intention of committing the offense, the fact that officers of the Government or of the city incited and by persuasion and misrepresentation induced him to commit the offense charged, in order to entrap, arrest and prosecute him therefor, I instruct you that this is fatal to the prosecution and the accused is entitled to a verdict of not guilty in relation to the sale of the said intoxicating liquor to the witness McGee." Defendant's Requested Instruction No. I.

## II.

That the trial Court erred in refusing to give the jury the following instruction requested by the defendant:

"The Court instructs the jury that where the criminal intent originates in the mind of the entrapped person, and the accused is lured into the commission of the offense charged, in order to prosecute him therefor, it is the general rule that no conviction may be had though the criminality of the act is not affected by any question of consent, therefore if you find from the evidence in this case that the officer McGee or any officer of the State of Oregon or of the city of Astoria lured or induced the defendant Pasco Bakotich to commit the offense charged in order [17] to prosecute him therefor, then I instruct you that your

verdict should be not guilty.” Defendant’s Requested Instruction No. II.

III.

That the trial Court erred in failing to instruct the jury on the law of entrapment.

IV.

That the trial Court erred in denying the motion for a new trial herein, said motion being based upon the errors complained of in assignments I and II hereof.

C. W. ROBISON,

E. M. MORTON,

Attorneys for Plaintiff in Error.

State of Oregon,

County of Multnomah,—ss.

Service accepted and copy received this 24th day of March, 1924.

MILLAR E. MCGILCHRIST,

Assistant United States Attorney,

Attorney for Defendant in Error.

Filed March 24, 1924. G. H. Marsh, Clerk.  
[18]

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AND AFTERWARDS, to wit, on Monday, the 24th day of March, 1924, the same being the 19th judicial day of the regular March term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [19]

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

C.—10,471.

March 24, 1924.

PASCO BAKOTICH,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

MINUTES OF COURT—MARCH 24, 1924—  
ORDER ALLOWING WRIT OF ERROR.

Upon reading and filing the petition of plaintiff in error above named for an order allowing him to procure a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States for the District of Oregon, it appearing that said defendant has filed herein the assignments of error relied upon;

IT IS NOW THEREFORE HEREBY ORDERED that said petition be and the same is hereby allowed and that a writ of error issue as in said petition prayed for and that a citation be issued and served herein;

AND IT IS FURTHER ORDERED that said writ of error operate as a supersedeas and the defendant be admitted to bail upon furnishing a bond in the penal sum of twenty-five hundred dollars



(\$2500.00) conditioned according to law, to be approved by the undersigned.

CHAS. E. WOLVERTON,  
Judge.

Service accepted this 24th day of March, 1924.

MILLAR E. MCGILCHRIST,  
Assistant United States Attorney,  
Attorney for Plaintiff.

Filed March 24, 1924. G. H. Marsh, Clerk.  
[20]

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AND AFTERWARDS, to wit, on the 24th day of March, 1924, there was duly filed in said court a supersedeas bond on writ of error, in words and figures as follows, to wit: [21]

In the District Court of the United States for the District of Oregon.

No. C.—10,471.

Indictment — Sections 3 and 21, Title 2, National Prohibition Act.

THE UNITED STATES OF AMERICA  
vs.

PASCO BAKOTICH.

BAIL BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS,  
That I, Pasco Bakotich, as principal, and J. P. McCann and Ole Nelson of the county of Clatsop, State and District of Oregon, as sureties, are by

these presents firmly held and bound unto the United States of America in the full sum of Twenty-five Hundred Dollars (\$2500.00) to be paid to the United States of America, to which payment well and truly to be made we hereby bind ourselves, our heirs, assigns, successors, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of March, A. D. 1924.

WHEREAS, on the 15th day of March, 1924, at Portland, Oregon, in the District Court of the United States for the District of Oregon in a cause pending in said court between the United States of America as plaintiff, and Pasco Bakotich as defendant, a judgment and sentence was rendered against said Pasco Bakotich and the said Pasco Bakotich has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit directed to the United States District Court of Oregon to reverse the judgment and sentence in said [22] cause, and also a citation directed to the said United States of America citing and admonishing the United States of America to be and appear in said court thirty days from and after the date of said citation, which citation has been duly served upon the United States of America.

NOW, THEREFORE, the condition of this obligation is such that if the said Pasco Bakotich shall appear in the United States Circuit Court of Appeals for the Ninth Circuit when said cause is reached for argument, or when required by law or by the rule of said Court, and from day to day

thereafter until such cause shall be finally disposed of, and shall abide by, and obey, the judgment and all orders made by said Circuit Court of Appeals in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct if the judgment and sentence against him shall be affirmed, then the above obligation to be void; otherwise to remain in full force and effect.

PASCO BAKOTICH,  
Principal.

J. P. McCANN,  
Surety, Residing at Astoria, Oregon.  
OLE NELSON,  
Surety, Residing at Astoria, Oregon.

State of Oregon,  
County of Clatsop,—ss.

I, J. P. McCann, and I, Ole Nelson, whose names are subscribed to the foregoing obligation as surety, being first severally sworn, do each severally depose and say:

That I am a freeholder and resident within the State of Oregon, and am worth the sum of Two Thousand Five Hundred (\$2,500.00) Dollars over and above all my [23] just debts and liabilities, and exclusive of property exempt from execution.

J. P. McCANN.

OLE NELSON.

Subscribed and sworn to before me this 18th day of March, 1924.

[Seal]                      HOWARD K. ZIMMERMAN,  
United States Commissioner for District of Oregon,  
Residing at Astoria, Oregon.



Approved this 24th day of March, 1924.

CHAS. E. WOLVERTON,  
Judge.

Service of the foregoing received at Portland, Oregon, this 24th day of March, 1924.

MILLAR E. MCGILCHRIST,  
Assistant United States Attorney.

Filed March 24, 1924. G. H. Marsh, Clerk.  
[24]

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AND AFTERWARDS, to wit, on the 12th day of May, 1924, there was duly filed in said court, a bill of exceptions, in words and figures as follows, to wit: [25]

In the District Court of the United States for the District of Oregon.

UNITED STATES,

Plaintiff,

vs.

PASKO BAKOTICH,

Defendant.

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, That on the 19th day of February, 1924, at the hour of ten o'clock A. M. during the — term of said Court, this cause came on for trial before the Honorable Judge Wolverton, Judge of the District Court of the United States for the District of Oregon, and the Honorable Millar E. McGilchrist appearing for the Govern-

ment and C. W. Robison and Frank J. Lonergan for the defendant, and this matter coming on for trial upon the issue therein joined before a jury for that purpose duly impaneled and sworn, the defendant and the Government, in support of the issues, produced and offered the following evidence contained in reporter's notes which are filed in the District Court of the United States for the District of Oregon, Portland, Oregon.

That at the conclusion of the Government's case the defendant in support of his issues produced and offered the following evidence contained in reporter's notes which are filed in the District Court of the United States for the District of Oregon, Portland, Oregon, the same being a transcript and translation of reporter's notes, which transcript is on file in the office of clerk of said Court. And thereafter the defendant duly made, served and argued a motion for new trial, which said motion for new trial was denied, to which defendant duly excepted. That thereafter it was stipulated between the Government and the defendant that the defendant may prepare his [26] bill of exceptions in narrative form, which said narration should be confined strictly to testimony as offered in said cause, which said narration has been examined by the Government and conceded to be a true and correct statement of the matters and things testified to on direct and cross-examination by the only witness called for the defense, the defendant himself, and which said transcript of reporter's notes of said testimony are filed with the Clerk of the

(Testimony of Pasco Bakotich.)

District Court of the United States for the District of Oregon, and which is as follows:

TESTIMONY OF PASKO BAKOTICH, IN HIS  
OWN BEHALF.

NARRATIVE OF DEFENDANT.

My name is Pasco Bakotich. I am the owner of 83-7th Street. I am a resident and citizen of the United States and have lived in the United States twenty-six years. I am married and my family consists of myself, my wife and four children. On first coming to Astoria I was a fisherman and later bought a grocery store and fish market, in which I was in business for about two and one-half years. I then went to work for other parties and afterwards went fishing again. I fished this time for about three years. I couldn't stand fishing—my lungs were bad and my heart was getting weak. I have been sick for about eight years steady. I was attended by Dr. Kinny of Astoria, who treats consumptive people and later I went to Dr. Matsen. After the fire in Astoria I went to Seattle and in about January, 1923, I bought the business I now have in Seattle. I came back to Astoria in July, 1923. From the time we opened the place I have not changed any partitions or part of our building. There is an entrance in the back to the basement. This basement is wide open. It is a big basement, probably sixty feet wide and one hundred feet long, and covers all the floors in that block. There is a trap door there where we throw the empty bottles



(Testimony of Pasko Bakotich.)

and boxes that are about the place. I heard McGhee testify.

Q. Before we get to McGhee—since you have operated that place, to your knowledge, has a drunken man ever been arrested out of there?  
[27] A. No, sir.

Q. Has ever any liquor been sold in there?

A. No, sir.

Q. You heard McGhee testify. Just tell the jury—talk to them so they can hear you—how you saw McGhee, how long you have known McGhee, all about that incident.

A. Well, McGhee, beginning when he come in the place?

Q. Yes.

A. There was another friend of mine, kind of old man, working in logging camp, I was playing a game of pitch with him for cigar, and beat him two games. And McGhee come in alongside this man, and asked me for a drink. I say, "What kind of drink do you want? What do you mean, drink?" I say, "What do you mean, drink? Soda water, water, or what do you want?" He looks kind of sick to me, pale in the face. "Why," he says, "Come on, Paul, give me a drink." I asked him, I says, "McGhee, this is two or three times this week you have come in to this place. I don't know what you mean. Now, you better look out, don't come back, because you know very well we don't sell that stuff in this place. I never yet did sell one man, and I don't handle that stuff." He says,

(Testimony of Pasko Bakotich.)

“Paul, please give me drink, because I am sick”; and you know so many times he is sick, and sick, and put his hand like this (illustrating). “Paul, please give me drink.” I say, “McGhee, I ain’t got any. Get off me.” I thought maybe he was drunk. I thought maybe I would give him fifty cents to go ahead, look for drink. “Well, you don’t know what happened to me last night.”

Q. Who said that?

A. McGhee. He says, “You don’t know what happened to me last night.” I says, “I don’t know—fight?” “No,” he says, “I went down on Astor Street, on some joint, and,” he said, “I had about three hundred some odd dollars, just come from the camp. I am clean broke.” So, to tell you the truth, I had a bottle a little bigger than this one, in my possession. [28]

Q. What bottle is that?

A. This is pills from Dr. Matson.

Q. How big was the bottle you had?

A. Just a little bigger than this bottle. And I had this for myself, you know, some time when I feel bad. I can’t help it, you see, I am sick sometimes. Doctor tells me no smoke. I tell him I don’t smoke—I smoke right now. Dr. Matson tell me don’t smoke for three years, and Dr. Matson sent order for doctor, so he give me order for the same pills, and no smoke, no drink whiskey. A friend of mine tell me, “What are you looking for doctor? Whiskey is good for your sickness. Your lung is bad.” He says, “It won’t *small hurst*.”

(Testimony of Pasko Bakotich.)

I am no drinker, that I was ever drunk in my life, or drink so much; but I just have used little bit, and have in my pocket when I feel so bad, I go in some where in back room to have a little bit. Lasts me about three drinks, to take that way. Little bigger bottle than this—about three drinks.

Q. What did you do?

A. Then I took out from my pocket, I seen him so sick, I thought to save his life. I know what sickness is. And I poured it out in glass. I said, "Go ahead, McGhee." Then he come out, went in his pocket. He says, "Paul, I want you this, because, I know, of course, your money." I say, "No. That don't cost me money at all. I didn't buy that. There is friend of mine gave it to me. I gave you that for sickness, not for selling it to you. So if want help go ahead. Take your money back, I don't want your money." And I didn't take his money. So then he see that something is wrong, that I don't take it away from him. *The he* don't want the drink. So he took it he went back from the door, just as he was himself about three or four feet, he took his gun out, he says, "Stay where you are." I put my hand like this—I say, "I won't move." I stood right up. Chief of Police, about three minutes after, come in. He says, "What have you got in your hand?" He says, "There is whiskey; Paul gave it to me." "Is Paul under arrest?" "Yes, sir." He asked me, [29] "Paul, give me empty bottle." So I went down, I give him bottle—he poured that from the glass in



(Testimony of Pasko Bakotich.)

the bottle. He just took me in his own machine up to the station.

Q. In his own machine?

A. Yes, sir, in his own machine up to the station. He had the whiskey right here in his pocket. I could grab it from that, and throw it in the street.

COURT.—Who had the whiskey?

A. The Chief had the whiskey, alongside. I was sitting in front of him, right in front of the car, and he had that same whiskey in bottle.

COURT.—Oh, yes, he had that?

A. Yes, he got that right in his pocket.

Q. Did you have any talk with the Chief about the sale of this liquor to McGhee?

A. Well, one day Chief come to my place, and called me to one side. “Paul,” he says, “It is the best thing you come up and see city attorney. He told me to tell you to come up and see him.” So I didn’t know what. So Chief went out there. Some time I had in cigar-store, so I give it to him, every time he come in the place, I give it to him, he ask for it, every time he take smoke. I call up Mr. Zimmerman, United States Commissioner, I say, “Mr. Zimmerman, did you—”

Mr. MCGILCHRIST.—Your Honor, as to what took place, Mr. Zimmerman is not called as a witness—I don’t believe what took place between this defendant and Mr. Zimmerman is material in this case.

Mr. ROBISON.—I was going toward the answer



(Testimony of Pasco Bakotich.)

to the Chief's statement as to the conversation he had.

COURT.—Confine yourself to that.

Q. Paul, not what conversation you had with the United States Commissioner or the city attorney, but what conversation you did have with the Chief of Police about this?

A. Chief, he tells me that Mr. Zimmerman, the city attorney, wanted to see me—that is what he told me—about this case. [30]

Q. I see. Was the Chief of Police there when you talked to Mr. Zimmerman? A. No, sir.

Q. Now, there has been some testimony in this case that you had a bottle or glass—milk bottle or glass, or half-gallon pitcher, which you rinsed out every time the officers came in? A. No, sir.

Q. Did you ever have a half-gallon pitcher in the place?

A. I had one pitcher was about, maybe a quarter, we used to buy coffee in the morning from the restaurant. We didn't have no cooking stove inside.

Q. Did you ever have any cooking in there?

A. Yes, we cook roasting—that is all. We buy coffee sometimes from restaurant, same pitcher.

Q. There has been some testimony here that time after time the officers came in there, and either yourself or Bosciola rinsed out these glasses and pitchers and jugs. Did you ever do that?

A. Well, I will tell you, maybe sometime. We

(Testimony of Pasko Bakotich.)

got lots of glasses, a fellow is busy, wash beer glass. I probably some time maybe washed glasses. I won't say nothing about that.

Q. Now, did you ever throw any liquor, or dump any liquor into that sink?     A. I never did.

Q. Or, did anybody, to your knowledge, ever dump or throw any liquor in that sink?

A. I don't think—I don't see any. I don't believe they did. I don't believe anyone did.

Cross-examination.

A. After he asked me, and I give it to him, he took out money.

Q. What?

A. After I give him drink, he took out money. He says, "Take it. Friend of mine gave me 50 cents. I don't want this for nothing. I [31] know you don't get it for nothing yourself." I says, "No, I didn't pay for that."

Q. They lied when they went on the stand and said that?

A. Yes. They are after me to sell moonshine, but I am not going to do it. They are after me, to make some money from me.

(By the COURT.)

Q. Did you pour this liquid out into the glass for him to drink?     A. Yes, sir, I did.

Q. Did he put anything else with it?

A. No, sir.

Q. How much was in the glass when you gave it to him?

(Testimony of Pasko Bakotich.)

A. Oh, I figure about an ounce and a quarter. There won't be very much difference, but just a little bigger than this bottle.

Q. Did you give him the full contents of the bottle? A. Yes, sir, I did give him every drop of it.

Q. And you gave him this bottle to put it in?

A. I gave him this bottle and he took it up to the station.

Q. So you think that looks like the liquid you gave him?

A. Yes, it looks like the same, I guess.

That thereafter the defendant submitted to the Court the following instructions:

I.

The Court instructs the jury that in cases where the criminal intent originates in the mind of the defendant, the fact that officers, either of the Government or of the state, used decoys or truthful statements to furnish opportunity for or to aid the accused in the commission of a crime in order successfully to prosecute him therefor, that these acts of the officers are no defense, but on the other hand, if the accused never conceived any intention of committing the offense, the fact that the officers of the Government or of the city incited and by persuasion and representation induced [32] him to commit the offense charged, in order to entrap, arrest and prosecute him theretofore, I instruct you that this is fatal to the prosecution and the accused is entitled to a verdict of not guilty in rela-



tion to the alleged sale of the said intoxicating liquor to the witness McGhee.

## II.

The Court instructs the jury where the criminal intent originates in the mind of the entrapping person, and the accused is lured into the commission of the offense charged, in order to prosecute him therefor, it is the general rule that no conviction may be had through, the criminality of the act is not affected by any question of consent, therefore if you find from the evidence in this case that the officer McGhee or any officer of the State of Oregon, or of the city of Astoria, lured or induced the defendant, Pasko Bakotich, to collect the offense charged in order to prosecute him therefor, then I instruct you that your verdict should be not guilty.

That thereafter the Court instructed the jury as follows:

### INSTRUCTIONS OF COURT TO THE JURY. Gentlemen of the Jury:

This defendant is charged by an information of the United States District Attorney with, first, having in his possession moonshine whiskey, fit for beverage purposes, and containing more than one-half of one per cent of alcohol; second, with having sold a quantity of moonshine whiskey of the same nature; and, third, with having maintained what is styled under the law a common nuisance. Those are the three charges in the information. That is to say, the information contains three counts.

Now, the defendant has entered a plea of not guilty. That plea, Gentlemen of the Jury, puts in



issue every material allegation of the information, and every element of each count thereof, and that places upon the Government the burden of establishing, to your satisfaction [33] beyond a reasonable doubt, every material allegation of the information, and every element which goes to make up the charges preferred against the defendant.

The defendant, under the Constitution and the laws of this country, and under the policy of the laws and institutions, is presumed to be innocent until he is proven guilty beyond a reasonable doubt, and that presumption, Gentlemen of the Jury, abides and remains with the defendant throughout the entire trial, and until the evidence in the case satisfies your minds, beyond a reasonable doubt, of the guilt of the defendant.

Now, the defendant is charged here upon the three offenses which I have indicated to you, and he is to be tried upon those three offenses alone. He cannot be convicted for any other offense that he may have committed than these three that have been specified in the information.

The elements of these offenses are: as to the first count, that the defendant did have possession of the liquor. Possession means simply the right to dispose of, the right to do with as he desired, or the right to use it as he might desire; and this fact of possession, as alleged, must be proven and established on the part of the Government beyond a reasonable doubt.

Under the second count, the simple element is, did the defendant sell moonshine whiskey to Mc-

Ghee. A sale is simply an understanding between the parties, whereby one party passes property to another party for a consideration. And this fact must be proven to your satisfaction beyond a reasonable doubt.

Under the third count, the defendant is charged with having maintained a common nuisance. Now, Gentlemen of the Jury, under the law, a common nuisance is a place where whiskey or intoxicating liquor is kept or sold, or manufactured, or dispensed in any way, unlawfully. So that is what we understand by a common nuisance. And the fact alleged here must be established by the Government to your satisfaction [34] beyond a reasonable doubt.

Now, there has been testimony admitted here, Gentlemen of the Jury, tending in some way to show that the defendant had, prior to this time, either been dealing with intoxicants, or had them about his premises, or was exhibiting acts which would tend in some measure to show that he was engaged in the business of dispensing intoxicating liquor. I refer to the testimony of the Chief of Police and the other officer who testified here. [This testimony is not permitted to go to you for the purpose of proving the sale that was made on that date of September 14th; but it is admitted for the purpose of showing, if it has that effect, whether or not the defendant was maintaining and keeping a common nuisance. A nuisance is, under the law, a continuing affair. Perhaps a single sale alone, without other corroborating circum-

stances, would not prove a nuisance, or the maintenance of a nuisance; but you may take that into consideration, with the demeanor of the defendant about his place of business. Hence his testimony that I speak of now has been admitted for your consideration to determine whether or not the defendant has so demeaned himself there, with reference to this place of business, that you may thereby infer that he was maintaining a place where liquor was sold, or being dispensed or dealt in. And that is the reason that testimony is offered.

The Court has permitted to go to you also testimony touching the general reputation of this place as to being a place where liquor was sold and dispensed. General reputation is competent evidence in a case of this kind, and so the officers, both of them, have testified to this general reputation. This I allowed to go to you for the purpose of establishing, to the extent that the proof might be competent in your minds for that purpose, the fact as to whether the defendant was maintaining a common nuisance at that time.

Something has been said here about a decoy, or about the act of McGhee acting as a decoy, in order to induce this defendant to commit [35] the offense with which he is charged here. A person, and an officer, has a perfect right, for the purpose of determining whether crimes have been committed, to, as in this case, approach the person who is suspected and propose to purchase liquor of him. That is done every day. It is done with reference



to the postoffice departments. An officer who is carrying the mails, for instance, is suspected of taking money in it, and at the end of the route it is found that the letter has been opened and the money taken out. The fact of putting the decoy letter in the mail is for the purpose of obtaining information as to whether the person suspected is transgressing the law. So, in this case, McGhee had a perfect right to go to this defendant and propose to buy liquor of him, for the purpose of determining and ascertaining whether or not the defendant was engaged in the business of selling liquor; and that is about all there is to that.

Now, the question comes up to you, on the first count, did the defendant have possession of this liquor? He comes into court, and admits that he had possession of the liquor, and that perhaps the same liquor that is found in the bottle there is the liquor that he did then and there turn over to McGhee. Possession is presumptive evidence that the person has committed the offense of having it unlawfully. When that is shown, the burden is cast upon the defendant to show that he had and possessed the liquor lawfully. There are circumstances under which a person may possess liquor lawfully. For instance, if he had the liquor before the Prohibition Act went into effect, or before the constitutional amendment became effective, that liquor would be lawfully held by him. Or he may possess it lawfully by getting it through the prescription of a doctor, and in other ways that may be set forth in the prohibition law itself. But now the



burden is cast upon the defendant to show that he had this liquor lawfully. If he failed to do that, he is guilty under that first count in the indictment of possessing liquor.

Now, as to the sale, it seems that the immediate question as to [36] whether a sale took place between the defendant and McGhee depends almost alone upon the testimony of McGhee and the defendant. They do not concur in what they say about it. The defendant says that he gave the liquor to McGhee. Of course, the Government, having alleged a sale, must prove a sale, and if the defendant gave the liquor to McGhee without a consideration, the count is not proven. But the question here, Gentlemen of the Jury, is for you to determine, as between these two men, which one is telling the truth. Is McGhee telling the truth when he says he paid 50 cents for this liquor; or is the defendant telling the truth when he says that he gave the liquor to McGhee? You may take into consideration all the circumstances surrounding the entire transaction—what was done and said there, and the probabilities of the fact, and determine for yourselves whether or not, beyond a reasonable doubt, the Government has established the fact, as alleged, that the defendant sold liquor, intoxicating liquor, or moonshine, to the plaintiff.

As to the third count, Gentlemen, I have described that to you quite fully, and the question is, Did the defendant maintain a common nuisance, as defined by the prohibition law? And you may determine that from all the facts and circumstances,

together with the manner in which he dealt in that place prior to the occurrence of this specific transaction, and all the testimony in the case.

In determining as to these matters, you will consider all the testimony in the case, both that given by the Government and that by the defendant, and harmonize it, if you can; but, if you cannot, then determine, from the entire testimony, whether or not the defendant is innocent or whether he is guilty.

A reasonable doubt, Gentlemen of the Jury, is not every captious doubt that might be raised for the purpose of getting rid of the question in hand. But it is a thing of substance. It is a doubt that would cause reasonable men to hesitate before acting in the more important affairs of life. It is such a doubt, applying it here, under [37] the consideration of all the testimony, with you acting as reasonable and fair-minded men, as will cause you to hesitate, and not to be able to say, under your conscientious views, that the defendant is guilty in this case. If you believe, Gentlemen, to a moral certainty, that the defendant has committed the offenses here charged, then you should find him guilty. If you cannot say, to a moral certainty, that he is guilty of these offenses, then you should acquit him.

You, Gentlemen of the Jury, are the judges of the effect of the testimony. The Court gives you the law, and you take that from the Court, and apply it implicitly; but when it comes to determining what the testimony in the case proves, that is a

function for you, and for you alone, and not for the Court.

A witness is presumed to speak the truth, but that presumption may be overcome by the manner in which he testifies, and by the character of his testimony, and by evidence affecting his character or his motives, or by contradictory evidence. A person found to be wilfully false in one particular is to be distrusted in all. And so you may take into consideration the interest that a witness may have in the outcome of this case, or in any other fact or circumstance or matter that may seem to have some bearing upon his credibility, and, in this way, Gentlemen of the Jury, you determine the credibility of the witnesses. When you have done that, you will be the better enabled to say, in the end, what your judgment shall be.

The defendant here has taken the witness-stand and testified in his own behalf. In determining the credibility of his testimony, you will apply the same rules as to the admission of evidence that I have given you as applicable to other witnesses in the case. You may take into consideration the interest he has in the outcome of this case, and any other fact or circumstance that seems to have a bearing upon the credibility of his testimony.

That thereafter as shown on page 26 of the transcript, the defendant, through his counsel, Mr. Lonergan, excepted as follows: [38]

“Are there any exceptions, Gentlemen?

Mr. LONERGAN.—If the Court please, the defendant would like to save an exception to the re-



fusal of the Court to give the instructions requested by the defendant.

COURT.—Yes, you may have your exception.

Mr. LONERGAN.—And we would like an exception to the illustration given by the Court with reference to decoy letters in the mail service.

COURT.—Very well.”

Whereupon the following narrative statement having been presented to the Court and by him examined, by the direction of the Court there is now included herein the direct examination of one Earl McGhee, called as a witness on behalf of the plaintiff, as follows, to wit: [39]

### TESTIMONY OF EARL MCGHEE, FOR PLAINTIFF.

#### Direct Examination of EARL MCGHEE.

(Questions by Mr. McGILCHRIST.)

Now, Mr. McGhee, you are a police officer of the city of Astoria, are you not? A. Yes.

Q. How long have you been such police officer?

A. A little over five months, I believe. I was appointed the 8th day of September, 1923.

Q. And you were such police officer on September 14, 1923, were you not? A. Yes, sir.

Q. Do you know the defendant Pasco Bakotich?

A. Well, I know him, yes.

Q. You see him in the courtroom? A. Yes, sir.

Q. Where? Just point him out.

A. That is the gentleman sitting right there.

Q. This is Pasco Bakotich? A. Yes, sir.



(Testimony of Earl McGhee.)

Q. When did you first see Pasco Bakotich, the defendant in this case, Mr. McGhee?

A. Why, it was probably a couple of days before I made the purchase.

Q. A couple of days before what time?

A. The 14th of September.

Q. The 14th of September, 1923?      A. Yes.

Q. Where did you see him?

A. He was behind the bar.

Q. In what place?      A. In this same place.

Q. Describe this place.

A. It is 83 Seventh Street, I think is the number, city of Astoria.

Q. What county?      A. Clatsop County.

Q. Oregon? What was he doing when you saw him, as you remember a few days before the 14th day of September, 1923? [40]

A. Well, he was attending the duties ordinarily of a bartender in a place of that kind.

Q. What kind of a place is this 83 Seventh Street?

A. Well, what I know of the place it was kind of soft-drinks, cigars, tobacco; also—

Q. Well, we will come to the other business being conducted there. It is ostensibly then a soft-drink place, where soft-drinks and cigars are being sold?

A. That is what it is generally known to be.

Q. And Pasco Bakotich on the day—that would be the 12th of September—was behind the bar when you first saw him?      A. Yes, sir.

Q. Since that time have you seen him in that place?      A. On September 14th.

(Testimony of Earl McGhee.)

Q. Now, just tell the jury, Mr. McGhee, when you say him on that day and where.

A. You mean on the 14th?

Q. September 14th, 1924.

A. It was 11:15 in the morning of September 14th when I entered the place, and I ordered a drink of whiskey.

Q. From this defendant?

A. From Mr. Bakotich.

Q. All right. Just tell the jury what took place.

A. Well, he served the drink. I tendered him the cash money for it.

Q. How much did you pay him?

A. I handed him a five-dollar bill.

Q. Yes?

A. And he rang it up in the cash register and gave me four fifty change. My drink was sitting on the bar.

Q. You may state, Mr. McGhee, where he secured the drink that he served to you. [41]

A. Well, he had it in a container just under the top of the bar. He reached under the bar. I didn't see the transaction. I didn't see what he filled the glass out of. I didn't see the container. But he brought the glass out, set it on the bar in front of me.

Q. When you went down to that place, Mr. McGhee, with whom did you go?

A. I went down there practically by myself, though Chief Entler and Captain Colby were behind me.

(Testimony of Earl McGhee.)

Q. You may state whether or not they knew where you were going on that particular day.

A. Yes, they did.

Q. They knew you were going to the place of Pasco Bakotich? A. Yes.

Q. So they were behind you, were they?

A. They were.

Q. All right. Now, you have stated that this defendant poured you out a glass of liquor?

A. Yes, sir.

Q. And you paid him fifty cents for it—gave him a five-dollar bill? A. Yes.

Q. Now, what did you do after that, Mr. McGhee?

A. I picked up the glass, and I stepped back down to the rear end of the bar, that is away from the entrance door, and I told him that was one mistake that he had made; that he had sold a drink to an officer. I told him he was under arrest for the sale of intoxicating liquor.

Q. What did he do at that time, if anything?

A. Well, he made a movement with his hand and arm under the bar, and I heard something fall, turn over, then he stepped back away from the bar; seemed to be more or less overcome [42] with the announcement that I made, when I showed the badge and placed him under arrest.

Q. State whether or not he made any attempts to destroy the liquor that you had got.

A. No, he made no attempt to destroy the evidence I had in hand.



(Testimony of Earl McGhee.)

Q. Where was he at the time you purchased the liquor, where was he with reference to where you stood? He was behind the bar, was he?

A. He was behind the bar; yes.

Q. And the bar, of course, was between you?

A. Yes.

Q. Now, Mr. McGhee, then you stated that you place him under arrest? A. Yes, sir.

Q. What transpired? Did anybody else assist you in arresting this defendant, or not?

A. Well, yes. The Chief entered about that time.

Q. Now, with reference to the delivery of the liquor to you, and the payment of the money by you to this defendant, when did the Chief enter?

A. Immediately after. I don't think the Chief saw the actual transaction.

Q. You don't know exactly what the Chief saw, of course? A. No, he was outside.

Q. Did you see where the Chief was as you entered?

A. No, I didn't. I couldn't say exactly where he was.

Q. Did you see him before you had purchased the moonshine whiskey from this defendant?

A. No, I didn't see him after I entered the place until after I made the purchase.

Q. Had you actually placed your hands upon the defendant before the Chief entered the place? Just state what are the facts [43] in reference to that.



(Testimony of Earl McGhee.)

A. No, I never made any effort to place my hands on him, or anything of that kind at all.

Q. What did you do? You stated you placed him under arrest, what did you do?

A. I simply told him that he was under arrest for selling intoxicating liquors.

Q. Then with reference to that, when did Chief Entler and Mr. Colby enter the place?

A. Chief Entler entered just about that particular moment.

Q. Now, you stated you were served. How were you served this moonshine? What was it served you in? A. It was served in a glass.

Q. Now, I hand you a glass, and ask you if you can identify that glass.

A. Yes, sir, that is the glass.

Q. You say that is the glass. What glass?

A. Either the same glass the liquor was served in or an exact duplicate.

Q. Did you put your initials on that glass or not?

A. No, sir. Chief Entler put the label on it.

Q. In your presence? A. Yes.

Q. You saw that placed on there, did you, by Chief Entler? A. Yes, sir.

Q. Now, with reference to the liquor that was served you in the glass, what did you do with it.

A. I turned it over to the Chief when he entered.

Q. What did he do with it, if you know?

A. He asked Bakotich for a bottle.

Q. What happened?

A. Bakotich gave him a bottle similar to the one that is sitting on the desk there. [44]

(Testimony of Earl McGhee.)

Q. Similar to this bottle? I hand you this bottle, and ask you if this is the bottle, or if you can identify that bottle.

A. Yes, sir. That is the same bottle, I think.

Q. Well, now, how do you identify it? Were you present when this was pasted on? A. Yes.

Q. You didn't put your initials on it any way?

A. No.

Q. Where was that pasted on?

A. It was pasted on in the police station.

Q. Now, Mr. McGhee, did Bakotich, the defendant here, make any statement, at the time you placed him under arrest or subsequent, with reference to this transaction?

A. He never said anything to me, no.

Q. Is he the proprietor of this place, this defendant? A. As far as I know, he is.

Q. Well, now, as far as you know—what knowledge have you? You may state whether or not he has ever told you that he was the proprietor of this place. A. No, he never did.

Q. What knowledge have you that he is the proprietor of the place?

A. I couldn't say that I have any direct knowledge that he is the owner of the place. He never made any statement to me himself, but others have. That is the only way I could know.

Q. That is not evidence. Had you ever been into this place prior to this time, Mr. McGhee?

A. I was in there once before I made the purchase, yes.

(Testimony of Earl McGhee.)

Q. You were in there once?     A. Yes, sir.

Q. When was that, Mr. McGhee?

A. That was probably two days before I made this purchase.

Q. What transpired on that day? [45]

A. About the same as in this case, with the exception that I was not served. I made the effort to buy a bottle.

Q. From whom?     A. From Bakotich.

Q. On the two days before?

A. Yes, sir. I would say it was two days before. He refused me under the excuse that he didn't have that much at the time; he couldn't spare that much that evening.

Q. Did he say to you that he had any on hand?

A. He didn't say whether he had any on hand or not. He said, "I haven't got that much," was the statement he made when I asked for the bottle.

COURT.—What sized bottle?

A. Pint bottle.

Q. How long have you been in town prior to the time you went in there? You said you went in there two days before; that would be September 12th?     A. Yes.

Q. You had been in town how long?

A. I had been in town since the fall of 1915.

Q. Oh, you have lived in Astoria for some time?

A. Yes, sir.

Q. Did you know Bakotich?

A. Well, I didn't know him personally. I knew him as a man around town. He was familiar, see-



(Testimony of Earl McGhee.)

ing him on the streets and different places at different times.

Q. Did you know the place he was conducting prior to the time you went in there?

A. No, I couldn't say that I did, that is as to any direct knowledge that he was running the place.

Q. State whether or not you know the reputation of this place in the community in which it exists as to its being a place where intoxicating liquors are commonly kept and sold. [46]

A. About all that I actually know about it is what I have already stated. [47]

## CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

United States of America,  
District of Oregon,—ss.

I, Chas. E. Wolverton, one of the Judges of the District Court of the United States for the District of Oregon, and the Judge who presided over the above-entitled cause, in order that the matter set forth in the foregoing bill of exceptions may be made a part of the record of this case, on appeal to the United States Circuit Court of Appeals for the 9th Circuit, do hereby certify that the within bill of exceptions is correct in every particular and is presented upon a stipulation of the parties hereto made before me in open court and that the same is hereby settled and allowed and approved as and for a bill of exceptions in this cause and made a



part of the record herein. Done in open court this 12th day of May, 1924.

CHAS. E. WOLVERTON.

Service of the foregoing bill of exceptions and copy thereof received at Portland, Oregon, this 12th day of May, 1924.

MILLAR E. McGILCHRIST,  
Asst. United States Attorney,  
Attorney for Plaintiff.

Filed May 12, 1924. G. H. Marsh, Clerk. [48]

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AND AFTERWARDS, to wit, on the 14th day of May, 1924, there was duly filed in said court a praecipe for transcript, in words and figures as follows, to wit: [49]

In the District Court of the United States for the District of Oregon.

No. C.—10471.

THE UNITED STATES OF AMERICA

vs.

PASCO BAKOTICH.

PRAECIPE FOR TRANSCRIPT OF RECORD.

Honorable G. H. Marsh, Clerk United States District Court, Portland, Oregon.

Dear Mr. Marsh:

Will you please prepare transcript of record in the case of United States vs. Bakotich to the

United States Circuit Court of Appeals for the 9th Circuit and include therein the following record:

1. Information.
2. Record of arraignment and plea.
3. Record of trial and verdict.
4. Motion for new trial.
5. Order denying motion for new trial.
6. Sentence.
7. Petition for writ of error.
8. Assignment of errors.
9. Order allowing writ of error.
10. Bill of exceptions.

E. M. MORTON,  
Of Attorneys for Defendant.

Filed May 14, 1924. G. H. Marsh, Clerk. [50]

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CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from 3 to 48 inclusive, constitute the transcript of record upon said writ of error, in the case in said court in which the United States of America is plaintiff and defendant in error, and Pasco Bakotich is defendant and plaintiff in error; that said transcript of record has been by me prepared in accordance with the direction of the said

plaintiff in error, and is a full, true and complete transcript of the record and proceedings had in said court in said cause as the same appear of record at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$11.45, and that the same has been paid by the said plaintiff in error.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 24th day of July, A. D. 1924.

[Seal]

G. H. MARSH,  
Clerk. [51]

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[Endorsed]: No. 4354. United States Circuit Court of Appeals for the Ninth Circuit. Pasco Bakotich, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Oregon.

Received July 28, 1924.

F. D. MONCKTON,  
Clerk.

Filed October 3, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



In the United States District Court for the District of Oregon.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

PASCO BAKOTICH,  
Defendant.

ORDER ENLARGING TIME TO AND INCLUDING JULY 30, 1924, TO FILE RECORD AND DOCKET CAUSE.

Now, at this day on motion of defendant above named and for good cause shown IT IS ORDERED that said defendant be and he is hereby allowed to and including the 30th day of July, 1924, in which to file his transcript of record and docket the above-entitled cause in the United States Circuit Court of Appeals for the 9th Circuit.

CHAS. E. WOLVERTON,  
Judge.

Dated: May 14, 1924.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including July 30, 1924, to File Record and Docket Cause. Filed May 16, 1924. F. D. Monckton, Clerk.

In the District Court of the United States for the  
District of Oregon.

C.—10471.

March 24th, 1924.

THE UNITED STATES OF AMERICA

vs.

PASCO BAKOTICH.

ORDER ENLARGING TIME TO AND IN-  
CLUDING MAY 23, 1924, TO FILE REC-  
ORD AND DOCKET CAUSE.

Now, on this day on motion of defendant and for good cause shown, IT IS ORDERED that defendant herein be and he is hereby allowed sixty days from March 24, 1924, in which to file his transcript of record and docket the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit.

CHAS. E. WOLVERTON,  
Judge.

[Endorsed]: No. 4354. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including May 23, 1924, to File Record and Docket Cause. Filed Mar. 26, 1924. F. D. Monckton, Clerk. Refiled Oct. 3, 1924. F. D. Monckton, Clerk.

